

ALL INDIA FEDERATION OF CENTRAL EXCISE

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v.

UNION OF INDIA AND ORS.

FEBRUARY 22, 1999

[K. VENKATASWAMI, G.B. PATTANAİK
AND M. JAGANNADHA RAO, JJ.]

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Service Law :

*Indian Customs and Central Excise Service Group A (Amendment)
Rules: Rule 18.*

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*Promotion—Feeder posts—Quota for—Retirement of promotee officer
of a particular feeder category—Vacancy arising due to—Filling up of—Held
: Need not necessarily be filled up by an officer of that particular feeder
category only.*

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*Promotion—Feeder posts—Quota rule—Deviation from—Validity—
Quota rule of 6:1:2 prescribed for promotion from three feeder categories—Ex-
cess promotions from one particular feeder category made—More officers
from other two feeder categories promoted in order to correct the imbalance
thereby deviating from the quota rule—Held : Such deviation not unfair.*

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*Promotion—Feeder posts—Quota for—Held : Quota rule has to be
followed while making the promotion—If any change is needed in the quota
rule, it is for party concerned to make out a case therefor and take appropriate
steps for such a modification—No direction for change for quota rule, neces-
sary.*

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**The feeder categories for promotion to the posts in Group A
services constituting the Indian Customs and Central Excise (Group A)
Service are :-**

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- (a) Superintendents of Central Excise, Group B;
- (b) Superintendents of Customs (P), Group B and
- (c) (i) Customs Appraisers, Group B;

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A (d) (ii) Promotees from the feeder-cadres of Customs Examiners in the ratio of 50:50.

B The Central Government, in order to resolve the grievances of various groups of officers, made certain proposals dated 8.6.1989 which were approved by this Court. According to these proposals, vacancies in Group A posts were to be filled up in the quota of 6 : 1 : 2. Paragraph 6.3 of the said proposals also provided that further vacancies were to be filled up on the basis of a 'cycle' in the above order. The Indian Customs and Central Excise Service Group A (Amendment) Rules, 1998 were accordingly issued to give effect to the said proposals.

C On behalf of the petitioners it was contended that the quota of 6:1:2 must be maintained at all times in Group A posts by ensuring that out of 9 promotee officers in Group A, 6 must be from the Central Excise; that as per paragraph 4 of the proposals, which mentioned posts and not vacancies; whenever a vacancy in Group A arose due to the retirement of D a promotee officer belonging to the Central Excise it must be filled up by a promotee officer from Central Excise and not by a promotee officer from Categories (b) or (c), that the Central Government had deviated from the quota rule of 6:1:2 by promoting more officers from the other two feeder categories on an *ad hoc* basis; and that the quota of 6 : 1 : 2 applied to E posts and not vacancies.

Dismissing the petition, this Court

F HELD : 1.1. There is no merit in the contention of the Writ Petitioners that at all times Group A posts must contain a ratio of 6 promotees of Central Excise for every 9 Group A posts. Such an intention does not follow from paragraph 4 or paragraph 6.1. of the proposals dated 8.6.1989 or the Indian Customs and Central Excise Service Group A (Amendment) Rules, 1998. [819-H; 820-A]

G 1.2. The purpose of *paragraph 4* of the proposals dated 8.6.1989 is to fix a quota of 6:3. between Central Excise and Customs Groups and to fix a further sub-quota of 1:2. between the two sub-categories in the Customs Department. It was never intended in the said *paragraph 4* that there should always be 6 promotees from Central Excise for every 9 posts in H Group A. [820-D-E]

2.1. It is nowhere stated in paragraph 6.1. of the proposals dated 8.6.1989 that posts falling vacant due to the retirement of Central Excise promotee officer in Group A are to be filled up only by promotion of another officer from Central Excise. [820-G] A

2.2. Paragraph 6.3. of the proposals dated 8.6.1989 clearly refers to vacancies. There is no conflict between paragraphs 4, 6.1. and 6.3. On the other hand, they form a harmonious scheme. Once officers from the three feeder categories are promoted to Group A, they cease to have their birthmarks of Group B in the promoted category of Group A. There would then be no question of filling up a vacancy in Group A created by the retirement of a promotee from Central Excise by another officer from the same Group. This is because, once promoted to Group A, the identity of the feeder channel from which they are promoted ceases to exist. [821-B] B C

2.3. *R.K. Sabharwal's* case is not applicable to the instant case because that case deals with the promotion of SC/ST officers for whom special provision has been made in Article 335 of the Constitution relating to adequate representation of the SC/STs in the services. The birthmarks there remain even on promotion inasmuch as a particular number of posts in the promotional category are reserved to be filled in only from among SC/STs. But this is not so in the case of normal quota rules between two feeder channels for recruitment or promotion. [821-C-D-E] D E

Paramjit Singh v. Ram Rakha, [1982] 3 SCC 19; *State of Punjab v. Dr. R.N. Bhatnagar*, [1998] 6 SCALE 642 and *State of J & K v. Trilokhi Nath Khosa*, [1974] 1 SCR 771, relied on.

R.K. Sabharwal v. State of Punjab, [1995] 2 SCC 745, held inapplicable. F

All India Federation of Central Excise v. Union of India, [1997] 1 SCC 520 and *Gagan Bakshi Yadav v. Union of India*, JT (1996) 5 SC 118, referred to. G

3. There have been excess promotions to Group A from the petitioners' category of Central Excise and, therefore, in order to correct this imbalance more officers from the other two feeder channels have been promoted on an *ad hoc* basis. Such a deviation from the quota rule of 6 : 1 : 2 cannot be said to be unfair. [823-H; 824-A] H

A 4. As long as a particular quota for promotion is fixed by a rule, it will have to be followed till the quota fixed therein is altered by appropriate amendment of the relevant rules. If any change of the quota is needed it is for the party concerned to make a case therefor and take appropriate steps for such a modification. It is not for this Court to issue any directions in this regard. [824-H; 825-A]

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V.B. Badami v. State of Mysore, [1976] 2 SCC 901, relied on.

CIVIL ORIGINAL JURISDICTION : I.A.Nos. 4.6-8 in Writ Petition (C) No. 306 of 1988.

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With

Writ Petition (C) No. 651 of 1997.

(Under Article 32 of the Constitution of India).

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Ms. Shyamala Pappu, M.N. Krishnamani, A.K. Ganguli P.P. Rao, Rakesh Diwedi, Dr. Rajiv Dhawan, Anoop Choudhary, (Suman J. Khaitan,) for M/s. Khaitan & Co., M.R. Krishnamurthi, G. Dewansi, Ashok K. Mahajan, Ms. Chandan Ramamurthi, R.C. Parija, Debasish Mohanty, J.R. Das, Amitesh Kumar, Ms. Vimla Sinha, L.R. Singh, Dev H. Sobhani,

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(In-person), Ashok K. Srivastava, P. Parmeswaran and V.K. Verma for the appearing parties.

The Judgment of the Court was delivered by

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M. JAGANNADHA RAO, J. We have before us writ petition - W.P. 651 of 1997 and certain Interlocutory Applications bearing Nos. IA 4, 6 to 8 filed in an earlier Writ Petition No. 306 of 1988. The said W.P. No. 306 of 1988 was disposed of by this Court by Judgment dated 22.11.1996 *All India Federation of Central Excise v. Union of India*, [1997] (1) SCC 520. Aggrieved by certain subsequent events, various parties have filed the writ

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petitions and I.As.

For the purpose of appreciating the disputes in these matters, it is necessary to set out the following facts:

H The feeder categories for promotion to the posts in Group A services constituting the Indian Customs and Central Excise (Group A) Service are:

- (a) Superintendents of Central Excise, Group B (which consists of all promotees from lower cadres); A
- (b) Superintendents of Customs (P) Group B (again all promotees from lower cadres); and
- (c) (i) Customs Appraisers Group B (consisting of officers directly recruited through UPSC); B
- (ii) Promotees from the feeder-cadres of Customs Examiners in ratio of 50:50).

During the pendency of the earlier writ petition, W.P. No. 306 of 1988, the Government of India came forward with certain proposals dated 8.6.1989 to resolve the long standing grievances of various groups of officers and to shorten litigation. This Court heard all the parties and their respective views on these proposals and accepted them. So far as the inter-se dispute between the two sub-categories in the third feeder category (c) was concerned - namely promotee and direct recruit Customs Appraisers Group B, it was stated that the decision in *Gagan Bakshi Yadav v. Union of India*, J.T. (1996) 5 SC 118 would govern. In respect of promotion to Group A posts from all the three feeder groups, (a), (b) and (c) it was agreed that the proposals of the Government of India dated 8.6.89 would govern. Under those proposals a new quota rule of 6:1:2 was to apply to these three feeder channels in Group B for promotion to Group A. This Court observed that the proposals were just fair and equitable and accordingly, the Union of India should amend the Rules so far as promotion to Group A service was concerned and review all post- 1979 *ad hoc* promotions to the posts of Senior Superintendent/Assistant Collector. This exercise was limited to the promotee quota of 50% of Group A posts from the three feeder channels because the remaining 50% in Group A was to be filled by direct recruitment. Certain other consequential directions were also given. The Writ Petition stood disposed of in terms of the said directions by Judgment dated 22.11.1996. C

As stated in the counter-affidavit of the Union of India, thereafter, Rule 18 of the Rules was amended on 23.3.1998 by the Indian Customs and Central Excise Service Group A (Amendment) Rules, 1998. Subsequently, the All India seniority List of Superintendents of Customs (P) and Superintendents of Central Excise in Group A on the basis of their continuous D
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- A length of service in Group B was issued. The seniority list of Customs Appraisers was also revised from 1961 and a final seniority list was published. In addition, a proposal for review of 1979 promotions was also started by requesting the UPSC to convene a meeting of the DPC for reviewing the *ad hoc* promotees from 1980 onwards. Various other stages of review of the promotions at the level of Assistant Commissioner (Group A) and Deputy Commissioner were referred to in the counter affidavit of the Government of India. After the review of all promotions is completed, it was proposed to bring about a final list of Assistant Commissioners by interpolating the Direct recruit Officers in Group A and the promotees from Group B, as promoted from the three feeder categories. But in the meantime, in view of the delay in the review to be done by the UPSC, it had become necessary to make further '*ad hoc*' promotions to Group A posts. As the bulk of these *ad hoc* promotions had not come from the feeder category of Superintendents, Central Excise Group B, they had filed W.P. No. 651 of 1997 questioning these *ad hoc* promotions. They also raised questions regarding interpretation of the Government's decision dated 8.6.89 and the subsequent amendment of the Rules in 1998. I.A. No. 4 was filed by the Direct recruit Customs Appraisers. I.A. No. 6 was filed by the Customs Superintendents (p). The Writ petitioner filed Contempt Petition No. 513 of 1997 and this Court ordered on 6.4.1998 the same to be registered as an I.A. IA 8 goes alongwith W.P. 651 of 1997. We shall deal with these matters one after the other.

Writ Petition No. 651 of 1997:

- The petitioners in W.P. No. 651 of 1997 represented by learned senior counsel Smt. Shyamla Pappu, are the members of the All India Federation of Central Excise Gazetted Executive Officers Association who are Superintendents of Central Excise in Group B, representing the first of the three feeder groups. They contend that the true basis of the proposal of the Union of India dated 8.6.89 as reflected by *para 4* and *para 6.1* thereof is that at all times the ratio of 6:1:2 from the three feeder categories of Superintendent's Central Excise, Superintendents of Customs (Prevention) and Customs Appraisers, - all in the Group B - is to be reflected in the Group A posts. They contend that this was what was accepted by this Court in the Judgment dated 22.11.96 and that this principle is also incorporated in the Rules as amended in 1998. According to the petitioners, the intention behind these rules also is that at all times, whenever computation is to be made, the Superintendents of Central

Excise in Group A category must consist of promotees of Central Excise Superintendents from Group B in proportion of 6 out of 9. This is because in practice, most of these officers are aged and no sooner they are promoted, they are retiring. Therefore, it is contended, the ratio must be applied vis-a-vis the posts in Group A but not to the vacancies in Group A as and when they arise. If the ratio is to be applied as and when the vacancies arise, then even though some Central Excise Superintendents Group B get their promotions as per the above quota, the required proportion of 6 out of 9 in Group A posts will not always be maintained because of the frequent retirements of these promotees drawn from Central Excise Superintendents Group B category. Reliance is placed upon *R.K. Sabharwal v. State of Punjab*, [1995] 2 SCC 745 by the learned senior counsel for the petitioners. A
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This contention is opposed by almost all the learned senior counsel for the respondents, namely Shri Anoop Chowdhury for the Union of India, Sri Rajeev Dhawan and by Sri P.P. Rao for the other feeder categories. Respondents' counsel rely on para 6.3 of the proposals dated 8.6.89 where the procedure for filling the vacancies has been set out and also on *State of Punjab v. Dr. R.N. Bhatnagar*, [1998] 6 SCALE 642, to contend that in a quota rule like the one before us dealing with promotions, there is no question of filling up the vacancy in the higher cadre caused by retirement of a Excise Superintendent Group A promoted from the cadre of Excise Superintendent Group B, by another officer from the same feeder group in Group B. D
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The point therefore turns upon the true intention behind the proposals of the Union Government dated 8.6.89, the text of which has been incorporated in the earlier Judgment of this Court and also upon an interpretation of the Rules as amended in 1998, pursuant to the Judgment. As the question primarily depends upon the interpretation of the various paragraphs of the proposals dated 8.6.89, it becomes necessary to set out the same once again: F

"16. The relevant portions of the proposal are set out below: G

2.2. The seniority list of each of the above three feeder cadres is local and is maintained by each collectorate/Custom House- wise. The all-India lists of the first two feeder cadres are prepared on the basis of continuous length of regular service in the grade, subject to maintenance of *inter se* seniority of each local cadre. H

A The inter se ranking in the 3rd feeder cadre (that is, Customs Appraisers) was as per the 'General Principles of determining seniority of various categories of persons employed in Central Service' (generally known as quota-rotta principles) stipulated in the Ministry of Home Affairs OM No.9/11/55- RPS dated 22.12.1959 (which were modified by the Department of Personnel and Training OM No.35014/2/80-Estt. (D) dated 7.9.1986), prior to the framing of the Indian Customs and Central Excise Service Group 'A' Rules, 1987. In these Rules of 1987, it has been provided vide sub-rule (2) of Rule 18 that--

C (a) The vacancies to be filled by promotion shall be filled in accordance with the common seniority list of the three Group 'B' categories of the officers mentioned in sub-rule (1) above.

D (b) The seniority of the officers in Group 'B' feeder categories of service for eligibility for promotion to Group 'A' shall be determined on the basis of their regular length of service in their respective Group 'B' categories, subject to the condition that the *inter se* seniority in each feeder category of service shall be maintained.

E 3.1 The question of determining the seniority of the Group 'B' Officers of the different feeder cadres in the quota for promotion to the grade of Assistant Collector/Senior Superintendent Group 'A' has been the subject-matter of dispute in a number of cases, and thus, unfortunately, remained unresolved so far. There have been claims and counter-claims by the officers of the different feeder cadres. F Even at present, this dispute is the subject-matter of a number of writ petitions, *inter alia* before the Hon'ble Supreme Court.

G 3.2 Careful thought has once again been given to find a just and fair solution with a view to resolving this long outstanding dispute taking into account the reasonable prospects of promotion of officers of different feeder cadres. It is expected and hoped that, given the goodwill and a sense of reason on the part of all the concerned parties, it should be possible to find a solution which is just and fair to find a solution from both the streams - namely H Customs and Central Excise.

4. With this object in view, the Board have taken stock of the nature of Group 'A' entry grade posts (Senior Superintendents/Assistant Collectors) which are the subject-matter of dispute. For this purpose, the total number of posts in the entry grade of Group 'A' Service have been divided as (i) Central Excise posts and (ii) Customs posts, on the basis of functions which each post is required to perform. Posts required to perform wholly or predominantly functions under the Central Excise posts. Similarly posts required to perform wholly or predominantly functions under the Customs Act have been treated as Customs posts. The ratio so arrived at has been applied for dividing the common posts in the Directorates and CEGAT. This calculation gives the ratio of 65:36 as between Central Excise and Customs posts. Since the posts and persons manning them cannot be divided into fractions, the figures have been rounded to 67:33 so as to give the workable ratio of 2:1.

5.1 The proposal is that the promotee quota vacancies in the Group 'A' grade of Senior Superintendent/Assistant Collector may be filled from Central Excise and Customs Group 'B' Officers in the ratio of 2:1, the number of vacancies falling to the share of Customs Group 'B' Officers being further apportioned between the two feeder cadres of customs - namely, Customs Appraisers and Customs (Preventive) Superintendents in the ratio of their respective sanctioned strength (which, rounded off to workable ratio, comes to 2:1).

5.2 The need to further sub-divide the number of vacancies in the share of the Customs Group 'B' Officers between the Customs Appraisers and Customs (P) Superintendents arises because : (a) the two feeder cadres of Customs Appraisers and Customs (P) Superintendents are different and separate, (b) their seniority lists are separate, (c) whereas recruitment to Customs (P) Superintendents' Grade is 100% by promotion, in the case of Customs Appraisers, it is 50% by direct recruitment and 50% by promotion, and (d) in terms of the General Principles governing determination of seniority laid down by the M.H.A./DOP&T,

A where there are more than one feeder cadres, the *inter se* seniority of each feeder cadre is required to be maintained while preparing the seniority list in the higher grade to which promotions are to be made, which is also the promotion in the 1987 Recruitment Rules of IC & CES Group 'A'.

B 6.1 It is noticed that Central Excise Group 'B' Officers get their promotion to Group 'B' after having put in, by and large, very long years of service in Group 'C' and, consequently, they are of much older age group as compared to Customs Appraisers. Therefore, placing the Superintendents of Central Excise first and placing Customs Officers thereafter, in the promotion panel would not present any material disadvantage to Customs Officers. The age group of Superintendents of Central Excise is, by and large, such that they would retire before their turn for next promotion to the grade of Deputy Collector comes. As of now, there is hardly any Deputy Collector of Central Excise anywhere in India who is a promotee from Group 'B' in the Central Excise; Central Excise Officers would generally retire as Assistant Collectors, thereby increasing the chances of officers of younger age group from the Customs stream for their next promotion to the grade of Deputy Collector.

E 6.2 By and large, similar position would be there in the case of Customs (P) Superintendents vis-a-vis Direct Recruit Customs Appraisers. Therefore, a reasonable placement in the combined all- India seniority list may be in the following order:

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- (i) Superintendents of Central Excise, Group 'B'
 - (ii) Superintendents of Customs (P) Group 'B'
 - (iii) Customs Appraisers.

G 6.3 To sum up, according to the above formula, each bunch of 9 vacancies in the promotion quota for Group 'B' feeder cadres will be apportioned in the ratio 6:1:2 consisting of Central Excise Superintendents, Customs (P) Superintendents and Customs Appraisers respectively. To illustrate, if 9 vacancies exist for the

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promotee quota in Group 'A' entry point, the first six vacancies would go to Superintendents of Central Excise, the seventh vacancy to customs (P) Superintendents and the eighth and ninth to Appraisers; further vacancies to be filled up on the basis of a 'cycle' in the above order. A

7. For the purpose of making promotions to Group 'A' separate consideration lists of Superintendents of Central Excise on the one hand, and Appraisers (both direct recruits and promotees) and Preventive Superintendents of Customs on the other hand, would be drawn up first on all-India basis. While Group 'B' Officers of the two feeder cadres-namely, Superintendents of Central Excise and Superintendents of Customs (P) - may be placed in their respective consideration lists on the basis of their continuous length of service in Group 'B', the Group 'B' Officers of the feeder cadre of Appraisers may be placed in their list on the basis of the principles of quota-rotas as in the General Principles laid down from time to time in the instructions of MHA/DOP&T applicable to all the Services under the Union of India, circulated on 22.12.1959 and 7.2.1986." B C D

It will be noticed from *para 4* of the above proposals of the Government of India dated 8.6.89 that as between the Excise Department Officers and the Customs Department Officers, the promotions from Group B to Group A are to be in the ratio of 2:1 or 6:3, that is to say, 6 will go to promotees from Central Excise Superintendents Group B, thereafter, out of the next 3 promotions meant for the Customs Department, one will go to Superintendents (P) Customs and 2 to Customs Appraisers Group B. The order of the promotions is also set out in the ratio of 6:1:2 between Superintendents Excise, Superintendents (P) Customs and Appraisers, Customs, namely first 6, then one and lastly two, respectively from these three feeder channels. *Para 6.1* refers to the factual aspect of the Central Excise Superintendents Group A - promoted from Central Excise Superintendent Group B - retiring frequently. *Para 6.3* gives an example as to how the vacancies in Group A, as and when they arise, are to be filled. E F G

In our opinion, there is no merit in the contention of the Writ Petitioners that at all times Group A posts must contain a ratio of 6 promotees of Central Excise Superintendents Group B for every 9 Group H

- A A posts. Such an intention does not follow from para 4 or para 6.1 of the proposals dated 8.6.89 or the Rules as amended in 1998.

B It will be noticed that prior to the proposals 8.6.89, there was no quota as between the three feeder groups for purpose of promotion to Group A and it appears promotions were being made on the basis of the length of service or continuous officiation. But then, it was found over a period that such a procedure created various grievances among the three feeder groups. Therefore, introduction of a quota system was found to be necessary. Then the next question before the Department was as to what was to be the quota between the various groups. Obviously it was to be one providing an equitable distribution of Group A posts between the three feeder groups. For that purpose the department went into the question as to the posts having distinctive functions in the two main groups, the Excise and the Customs Departments and then it went into the same question in the two sub groups of the Customs officers. After finding out the number of posts in the two main groups of Excise and Customs, it was obviously decided that a quota of 2:1 or 6:3 would be fair as between Excise & Customs groups and that a further sub-quota of 1:2 would be just as between the two sub categories in the Customs Department. That was how the quota of 6:1:2 appears to have been arrived at. We are clear in our mind that, on a fair reading of the whole of para 4, that was all the purport of *para 4* and it was never intended in the said *para 4* that in the promoted category of Group A officers, there should always be 6 promotees from Excise Superintendents, Group B for every 9 posts in Group A.

F Learned counsel for the petitioners relied also upon *para 6.1*. There is no doubt a reference in *para 6.1* to the frequent retirements of those Group A officers who are promoted from the category of Excise Superintendents Group B but that fact, in our opinion, has been referred there for the limited purpose of giving precedence to the Excise Superintendents Group B for promotion to the first 6 vacancies in Group A, in every cycle of 9 vacancies. It is no where stated in *para 6.1* that because of such retirement of Excise Superintendents Group B on promotion to Group A, every such vacancy is to be filled only by promotion of another officer from Central Excise Superintendents Group B.

H The respondents are therefore right in relying on para 6.3. That para works out an example. It says that as and when vacancies arise in Group A give first 6 vacancies to 6 from Excise Superintendents Group B, then

the next vacancy to Customs Superintendent (P) and then the further two vacancies to the Customs Appraisers, in that order. Thus, on an analysis of paras 4, 6.1 and 6.3, we find no conflict whatsoever between the said paras. On the other hand, they form a harmonious scheme. The result is that once officers from these three feeder categories are promoted to Group A, they cease to have their birthmarks of Group B in the promoted category of Group A. There would then be no question of filling up a vacancy in Group A created by the retirement of a promotee Excise Superintendent Group B by another officer from the same group. This is because, once promoted to Group A, the identity of the feeder channel from which they are promoted ceases to exist.

Reliance by the petitioners is placed upon *R.K. Sabharwal's* case [1995] 2 SCC 745. That case deals with the principle that the posts vacated by an officer recruited from SC/ST category must be filled in only by the same reserved category. This is because of the special provision in Article 335 of the Constitution of India relating to adequate representation of the SC/STs in the services. The birth marks there remain even on promotion inasmuch as a particular number of posts in the promotional category are reserved to be filled in only from among SC/STs. On the other hand, so far as a normal quota rule between two feeder channels for recruitment or promotion is concerned, be it between direct recruits and promotees or promotion by a quota between different feeder groups (as in the case before us), the relevant precedents, are *Paramjit Singh & Others v. Ram Rakha & Others*, [1982] 3 SCC 191 and *State of Punjab & Others v. Dr. R.N. Bhatnagar & Another*, [1998] 6 SCALE 642. In *Paramjit Singh's* case which related to recruitment from among promotees and direct recruits, D.A. Desai, J. pointed out that if a quota rule between direct recruits and promotees were treated as a rule of reservation, then because of the frequent retirements of the promotees who were generally closer to retirement, most vacancies in the promotional posts would repeatedly go to the aged promotees leaving little scope for direct recruitment. At page 196, the learned Judge clarified as follows:

"What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre, it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule."

A The learned Judge further pointed out:

"Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was recruited, it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to."

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C On the facts of that case, it was pointed out that the quota there for recruitment was 4:1 between promotees and direct recruits and that therefore, "whenever vacancies occur in the service, the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees *irrespective of the factors or circumstances causing the vacancies* and as soon as four promotees are recruited bring in a direct recruit".

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E A like situation arose in *State of Punjab & Others v. R.N. Bhatnagar & Another*, [1998] 6 SCALE 642. That was again a case of recruitment by promotion to the posts of Professors from the category of Additional Professors and also by way of direct recruitment, in the ratio of 3:1. The Additional Professors, who represented the promotee feeder group having a quota of 3 vacancies in the cadre of Professors contended that whenever a Professor retired, one has to find out whether he was a promotee or a direct recruit. If the vacancy was created by retirement of a promotee, then

F the said vacancy in the promotional cadre had to be filled only by a promotee from the lower cadre and not by way of direct recruitment. Reliance for the said contention was placed by the promotees on *Sabharwal's* case. This Court distinguished *Sabharwal's* case as relating to a scheme of reservation and observed that in a system of quota between promotees and direct recruits, once the posts in the higher cadre were

G filled, thereafter if vacancies arose (say) by retirements, then it was not permissible to treat the vacancy as a vacancy earmarked for the category to which the retiree belonged before being promoted or recruited. Once the recruitment was made from two channels, the birth marks got erased as stated in *State of J & K v. Trilokhi Nath Khosa*, [1974] 1 SCR 771]. In

H *Dr. Bhatnagar's* case [1998] 6 Scale 642, Majmudar, J. observed (at p.652)

as follows:

"The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. As stated earlier, as the roster for 3 promotees and one direct recruit moves forward, there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee. Irrespective of the identity of the person retiring, the post is to be filled by the onward motion of 3 promotees and one direct recruit."

The position in regard to the quota of 6:1:2 in the case before us is no different.

For the aforesaid reasons, we are unable to agree with the contention of learned senior counsel for the writ petitioners Smt. Shyamala Pappu.

Learned senior counsel for writ petitioners furnished some data by way of tabular statements to show that those in Group A promoted from Superintendents of Excise Group B are a diminishing number and are never 6 out of 9 in the promoted post. But, in our view, that is not the way of looking at the problem in a case of ordinary quota as distinct from a scheme of reservation. The procedure indicated in the Government of India's proposals dated 8.6.89 in para 6.3 appears to us to be the correct one. We have already referred to it. It says that if vacancies arise in the Group A posts (towards the 50% quota of promotees as distinct from 50% quota for direct recruits to Group A) they are to be filled up from among the three feeder categories, the first six vacancies by Superintendents Central Excise in Group B, the seventh vacancy Customs (P) Superintendents and the eighth and ninth the Customs Appraiser group. That completes one cycle. The further vacancies as and when they arise in Group A are to be filled again by following the same procedure. There was a grievance raised by the writ petitioners that pending consideration of names by the UPSC for promotion to Group A, *ad hoc* promotions have been made to Group A and members from the first feeder category, namely, Superintendents of Excise Group B were not promoted. This was particularly so after the earlier judgment. In other words, the complaint is that for the said *ad hoc* promotions, the quota rule of 6:1:2 has not been followed. The answer of the Union of India in this behalf is that it has been

A found that earlier there have been excess promotions to Group A from the petitioners' category of Excise Superintendents Group B and, therefore, presently, more officers from the other two feeder channels have been promoted on an *ad hoc* basis so that there will be no imbalance when the final review takes place. Even assuming that for purposes of *ad hoc* promotions it would have been fair to follow the ratio of 6:2:1, the respondents

B have shown adequate justification for not following the said ratio while making *ad hoc* promotions. Thus if one of these groups in the quota has had more promotions earlier and if the Government of India wants to offset the said advantage, such an action cannot be said to be unfair.

C For the aforesaid reasons, this W.P. No. 651 of 1997 is liable to be dismissed. The same points are raised in IA 8 and for the same reasons, the said IA is also liable to be dismissed.

In I.A. No. 4, the applicants are the Customs Appraisers (Direct recruits) and their learned senior counsel, Sri Rajeev Dhawan contends

D that it will be sufficient that this Court fixes some time limit for implementation of the judgment of this Court dated 22.11.96 and directs preparation of an *inter se* seniority list of direct recruits Assistant Collectors and promotee Assistant Collectors within their quota and also for review of all promotions. There can be no objection for fixing some reasonable time

E limit.

I.A. No.6 and I.A.No. 7 are connected. I.A. No. 7 is filed for permission to file I.A. No.6. I.A. No.6 is filed by the Customs Superintendents (P) and their learned senior counsel Sri P.P. Rao contended that the ratio of 6:1:2 was based upon the cadre strength of 1989 and that the said ratio was

F liable to be altered going by the cadre strength or posts now available. The learned counsel contended that such a principle was already imbedded in the proposals dated 8.6.89 of the Government of India as extracted in the earlier judgment. According to him the department could not be permitted to proceed on the assumption that the ratio of 6:1:2 was to be followed for

G all time.

It may be noted that as long as a particular quota is fixed by a rule, it will have to be followed till the quota fixed therein is altered by appropriate amendment of the relevant rules. As held in *V.B. Badami v. State of Mysore*, [1976] 2 SCC 901 at 910, quotas which are fixed can only be

H altered by a fresh determination of the quota. It will be for the applicants

to take such steps as they deem fit, if they feel aggrieved about the existing quota but the filing of this IA is not the proper remedy. We are not also prepared to accept that the proposals of the Government of India dated 8.6.89 themselves visualised a constant change in the quota from time to time. Such a change, in our view, has to be done by a fresh determination and it is for the applicants to make out a case therefor and take the necessary steps for such modification.

For the aforesaid reasons, Writ petition No. 651 of 1997 and I.A.No.8 are dismissed. IA No.7 is allowed granting permission to file IA No.6. But IA No.6 is dismissed leaving it to the applicants to make out a case for change of the quota and take appropriate steps as the applicants may deem fit. We express no opinion as to the merit of such claim. The above matters are all disposed of as stated above.

IA No.4 in Writ Petition No.306 of 1988, there will be a direction to the Union of India to take steps for implementation of the judgment of this Court dated 22.11.1996 in Writ Petition No.306 of 1988 as expeditiously as possible and at any rate within a period of six months from the date of receipt of this judgment.

V.S.S.

I.A. Nos. 4, 6 disposed of.
I.A. No. 5 dismissed of.